

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
WESTERN DIVISION**

KIRBY G. TATE
CHRISTA TATE

PLAINTIFFS

VERSUS CIVIL ACTION NO. 5:05cv166-DCB-JMR

DOLAN WALLER, THELMA LINDSEY, &
FRANCIS RANSOM DEFENDANTS

ORDER

This matter comes before the Court on the plaintiffs' Motion for Continuance [**docket entry no. 61**]. Having reviewed the Motion and being otherwise fully advised as to the premises, the Court finds as follows:

On March 2, 2007, defendant Francis Ransom filed his Motion to dismiss for insufficiency of service of process [docket entry no. 44]. On April 13, 2007, the defendants filed their Motions to Dismiss for Failure to State a Claim and for Summary Judgment [docket entry no. 53]. On June 14, 2007, a Notice of Calendar Setting was entered on the docket [docket entry no. 55], setting the final pretrial conference for July 10, 2007, and scheduling a bench trial for the term of Court beginning on August 6, 2007. That same day, the Court issued an order to show cause [docket entry no. 56] as to why the plaintiffs had not responded to the three aforementioned motions.

Defendants moved for a continuance on June 29, 2007 [docket entry no. 57], based upon the plaintiffs' failure to respond to the three motions and other trial obligations by defense counsel. This

Court granted that motion by text order on July 9, 2007. On the same day, based upon representations of health problems by the plaintiffs' counsel and her representation that she would file a Motion for Extension of Time to Respond to the pending motions, the Court continued the matter to the three week trial calendar beginning on October 1, 2007, and rescheduled the final pretrial conference for September 11, 2007.

The plaintiffs filed a Motion for Extension of Time to File Responses to the three motions on July 12, 2007 [docket entry no. 58]. By an Order dated July 16, 2007 [docket entry no. 59], the Court granted the plaintiffs' Motion, giving them an additional thirty days to respond to the three pending motions. The plaintiffs failed to respond within the time permitted.

On September 10, 2007, over three weeks after the passing of the extended deadline for responding to the three motions and one day before the scheduled pretrial conference, this Court signed a Memorandum Opinion and Order [docket entry no. 62] disposing of the three motions and a Final Judgment dismissing the action [docket entry no. 63]. Court personnel made an unnumbered docket entry in which the next day's pretrial conference was cancelled in light of the forthcoming Final Judgment dismissing the action. Just minutes before the Memorandum Opinion and Order and Final Judgment were entered on the docket, the plaintiffs' counsel filed the Motion for Continuance now before the Court. The Court's Memorandum Opinion

and Order and Final Judgment were noted on the docket shortly thereafter.

Counsel for the plaintiffs asserts in the present Motion that her continued illness and other reasons have rendered her unable to timely respond to the defendants' motions and that she is seeking additional or replacement counsel for the plaintiffs. The plaintiffs claim that Kirby Tate has had his access to his legal files severely limited, which accounts for his inability to locate defendant Ransom's waiver of service of process which was returned as undeliverable. The plaintiffs also assert that Kirby Tate is unable to have confidential communications regarding this case because his conversations are recorded and limited to fifteen minutes in contravention of MDOC policy. Lastly, the plaintiffs allege that counsel for former defendants Epps and Spann continue to receive electronic notifications of the filings in this case, which prejudices Kirby Tate and hampers his participation in this action. The plaintiffs request a continuance, which they argue will not adversely affect the orderly progression of the case or work prejudice upon any party.

The Court is aware of the health and other issues surrounding the plaintiffs' counsel. Nevertheless, given the generous extensions of time already granted to respond to the long-pending motions and the eleventh-hour filing of their Motion before the scheduled pretrial conference, the Court does not find such Motion

to be well-taken. Neither does the Court find that the plaintiffs have offered sufficient cause for their failure to have served defendant Ransom with process. The Court is of the opinion that any additional extension of time to the plaintiffs would significantly interfere with the just, speedy, and inexpensive determination of this action.

IT IS HEREBY ORDERED that the plaintiffs' Motion for Continuance [**docket entry no. 61**] is **DENIED**.

SO ORDERED, this the 10th day of September, 2007.

s/ David Bramlette
UNITED STATES DISTRICT JUDGE